Pro-Justitia.

NETH-16.

No.94/1947.

SENTENCE.

IN THE NAME OF THE QUEEN!

The Temporary Court-martial at MEDAN has passed the following sentence in the case of the Prosecutor, ratione oficii, against:

SUGIBAYASHI Takeo,
according to his statement aged 27; born at SUGIHARA, HONDO, Japan; police inspector, living at SUGIHARA; now detained in MEDAN prison.

The Temporary Court-martial aforesaid:

In view of the order dated 5th September 1947 as altered at the sitting on 7th October 1947, sent by the Prosecutor to this Court-martial, at the foot of which order the accused is charged:

that he, whether or not together and in association with unnamed Japanese and with the Indonesians BARKI and SJAFEI,

a. at SAWAH - LOENTO,
b. at PADANG,
c. at EMMAHAVEN,

at anyrate in the West Coast Residency of Sumatra, on dates which cannot be exactly determined but all between March 1943 and August 1944 therefore in time of war, as a subject of the enemy power Japan and in his function as an officer or official of the KEIMUBU or Japanese general police, the members of which had police powers, committed war crimes and/or caused them to be committed by, among others, the said BARKI and SJAFEI who were subordinated to him, by contrary to the laws and customs of war exercising a systematic reign of terror over persons, men and women, arrested by the Japanese police, torturing them during or as a result of the interrogations to which they were submitted, and further also treating them badly during the time that they were detained, the accused and the said Indonesians having with the hand, the fist, a stick, a leather strap, a hammer, a stick studded with nails, an iron rod, repeatedly and at length, hit them until they bled and lost consciousness; having kicked them violently and on all parts of their body with heavily-shod feet; having threatened to kill them; having flung them to the ground with jiu-jitsu holds; having hung them upside-down by the feet; having hung them up their arms which had previously been tied behind their back; having stuck splinters under their nails; having made them kneel with a stick or rod stuck through the hollow thus formed behind the knees and then exerted pressure on the projecting ends of the said stick or rod; having pulled out their nails with pincers; having made them lie face to the ground for a long time with the body stretched out and supported only on their hands and feet; having poured large quantities of water into their body and then trod or danced on their abdomen, at anyrate exerted great pressure thereon so that the water was pressed out of their body again; having burnt them with lighted cigarettes; having dragged them along by a rope round their neck; having sent an electric current through them; having starved them deliberately; having withheld medecines from them deliberately; having shut them up for days on end in overcrowded rooms;
which systematic terrorism, bad treatment and tortures caused the death, or at anyrate severe bodily and mental suffering, of many arrestees.

In view of the writ dated 12th September 1947 serving this order, in which appears that the accused tempore utili is called upon to appear at

the sitting of-

the sitting of the Court-martial on 7th October 1947.

Having heard the demand of the Substitute Prosecutor, Dr.P.ROZENDAAL, dated 16th October 1947, to the effect that the Court-martial declare the accused guilty of the war crimes:

I. "Systematic terrorism", committed twice,
II. "Torture of civilians", committed three times,
III. "Bad treatment of prisoners", committed twice,

and on that account sentence him to the death penalty;

In view of the documents of the case, insofar as they were read out to and seen by the accused at the sitting;

In view of that which was put forward in his defence by the accused and by the latter's counsel, TADOKORO KOICHIRO;

CONSIDERING that during the sitting the accused ackowledged that at the time and place mentioned in the charge he was working as an official in the KEIMUBU, the Japanese general police;

that, further, it has been established by accused's admission that he is a subject of the enemy power Japan with which power the Kingdom of the Netherlands was at war;

that during his examination at the sitting the accused admitted that at PADANG about 30th July 1944 he gave the Chinese LIE SOEN WAN some blows on the face with his hand after the latter, having been arrested , had made an attempt to escape, but denied definitely that he was otherwise guilty of the ill-treatment or torture of prisoners and interned civilians, and also denied that he was guilty of the war crime"systematic terrorism" with which he has been charged;

CONSIDERING for the rest that the witness JO HOCK SENG, according to his interrogation on the dates 7, 8, 12, 14, 15, 20 and 22 June 1946 and 5th February 1947 (products G.I, G.II, G.III, GIV, G.V, G.VIII, G.IX, G.X, G.XI and G.XII, red) declared in substance on oath that he was present in October 1943 at an interrogation of the Ambonesian MATULESSY at PADANG when this prisoner was ill-treated by the Japanese police official SARUWATARI (the name appears by mistake in the corresponding statement as SAWATARI), BAKRI and the accused;

that the accused kicked MATULESSY with his shod foot and struck him on the head with his fist and with a wooden ruler, following this up with throwing him to the ground a number of times with jiu-jitsu holds;

that he, witness YO HOCK SENG, was present when in October 1943 a certain KEUSKAMP was ill-treated at PADANG by the accused and the interpreter SJAFEI, the accused forcibly throwing KEUSKAMP thwice against a wall;

that he was a witness when, that same month and in the same place, the prisoner COSIJN was first ill-treated by MIYAUCHI and HORITA and afterwards by the accused and SJAFEI;

that the accused and SJAFEI applied the so-called water-test to COSIJN by putting the end of a bit of hose connected with the water system into his mouth and then turning on the tap, after which they put a plank on his abdomen and exerted pressure by sitting on this plank;

that accused then held a lighted cigarette against COSIJN's head after having bound him to a pole;

that accused and SJAFEI beat COSIJN with a piece of wood and dragged him along the ground by means of a rope tied round his neck;

that he,witness, at the same time and place saw the prisoner LANZING ~~b~~ beaten by BAKRI and the accused on the head, body, arms and legs with a stick, and after this heard the accused threaten LANZING with death;

that about an hour later he saw accused and a certain YAMASHITA go into the cell where LANZING and COZIJN were and heard these latter shrieking and also heard the sounds of violent blows being struck;

that he ~~once was~~ once more a witness when during an interrogation of LANZING by the accused and SJAFEI, these latter beat LANZING on the head and all over the body with a whip composed of wires, and with a bit of wood and various other objects, through which beating LANZING sustained bleeding injuries;

that about the same time at PADANG he saw the accused and SJAFEI lay Ir.van RAALTEN, his hands bound, on the ground after he had first been ill-treated by SARUWATARI and BAKRI, and then stand on a plank which had been placed on top of him, van RAALTEN;

that with his shod foot the accused then kicked van RAALTEN in the face and body and made him remain for a long time stretched out with his face to the ground and only supported on his hands and feet, upon which van RAALTEN was again kicked and beaten by BAKRI, as a result of which ill-treatments van RAALTEN became completely exhausted and admitted all the facts charged against him;

that at PADANG in October 1943 he was witness of the ill-treatment of the prisoner ENGELENBERG by accused and SJAFEI when the former was beaten and kicked and was carried along by accused and SJAFEI, hanging with his bound hands from a pole;

that he was present about January 1944 when a certain van OMMEN was interrogated in the hospital at PADANG by accused who was helped by the interpreter SJAFEI;

that during this interrogation van OMMEN, who was lying ill in bed, was beaten by the accused;

that in October 1943 he was present/at PADANG at the interrogation of three brothers named DAVIES when G.R.DAVIES was ill-treated by accused and SJAFEI, being among other things violently hit all over his body with a stick and a bit of wood by the accused;

that he was witness of the ill-treatment at PADANG of the Ambonesian prisoners HALATU and SAPULETE, which ill-treatment was carried out by accused, BAKRI and some others; that accused told him later that SAPULETE and a certain APITULEY would be beheaded;

that, finally, witness YO HOCK SENG stated that he had heard from HAMID, a jailer at the SAWAH LOENTOH prison, that a prisoner there called BROUWER von GONZENBACH had been seriously ill-treated by accused and SJAFEI;

CONSIDERING that according to the statement dated 13th September 1946, (G.VII, red) YO HOCK SENG when confronted with the accused at PADANG, recognised him definitely as being the person mentioned by him in the statements he made during the preliminary investigation;

CONSIDERING that Herman Eugène BROUWER von GONZENBACH at his interrogations on the dates 15th March and 19th June 1946 during the preliminary investigation (respectively products P.I and P.II, red,) declared on oath that on 26th June 1943 he was interrogated at SAWAH LOENTOH by the Japanese SUGIBAYASHI - at a confrontation later at PADANG recognised by witness as being the accused (statement dated 13th September 1946, product P.III, red)- the interpreter SJAFEI and other police officials, as he was suspected of being concerned in an anti-Japanese conspiracy;

that at this -

that at this interrogation(mentioned by witness at his questioning on 15th March 1946 as having taken place on 9th July 1943) he was beaten by the accused with a stick till he lost consciousness;

that this statement is confirmed by the above-mentioned evidence de auditu by YO HOCK SENG;

that witness BROUWER van GONZENBACH declared further that later, after his arrest in the "Maria Vereeniging" buildings at PADANG, he was shown a letter by accused which was said to have been written by a certain van HOEVEN WIJSHARDT and which was obviously false, in which letter Ir.LANZING was accused of underground activities and which letter also was mentioned by YO HOCK SENG in his statement dated 22nd June 1946 (product G.XII, red);

CONSIDERING that Alex SCHEFFERS, in his statements written on oath and dated 27th April 1946 (products X.I, X.II and X.III, red), has declared that he had been told by Ir.LANZING, Ir.COSIJN and Karel BORST that they had been seriously ill-treated by SUGIBAYASHI and BAKRI, this witness having further stated that he saw that the above-mentioned prisoners were in a very bad physical state after the ill-treatments they had undergone and the traces of ill-treatment were clearly visible;

CONSIDERING that further information regarding the ill-treatemnt of the chief-engineer of the OMBILIN coal-mine, LANZING, can be found in the declaration of Henri Martimus LEROUX, according to the copy of his written statement dated 24th May 1946, (product I,red) in which witness said that he had been told by Ir.LANZING that he had been ill-treated by SUGIBAYASHI and BAKRI, LANZING having also said that he had heard from another prisoner, F.HOECOM, that this latter had been ill-treated by both the persons named;

that, further, the ill-treatment of LANZING and van RAALTEN has been confirmed by the sworn statement of A.UYLEMAN-ANTHONIJS dated 21st May 1946 (products Z I and Z II, red);

CONSIDERING that witness Henk de JONGH at his interrogation on 22nd Jan. 1946 by Dr.W.BEUN, the Substitute Prosecutor attached to this Court-martial, (product C.red), stated that in the police barracks at Emmahaven and on a date which cannot be precised but falling within the period December 1942-July 1943, he had seen the prisoner WIJCKERHELD BISDOM being beaten by SHUGUBASHI with a rattan cane having an iron tip on it, this during an interrogation which lasted about an hour;

that after this BISDOM was carried back to his cell by some others who had also been up for punishment and he, witness, had seen that blood was flowing from his mouth, nose and eyes;

that at midday he had asked BISDOM if he would like something to eat but the latter was no longer able to stand and not in a state to speak;

that next morning he saw that BISDOM's cell was empty and was told by a prisoner that BISDOM was dead;

CONSIDERING that Karel SIMON, as appears from the copy of his declaration on oath dated 12th June 1946(product J,red), stated that during his stay at Emmahaven (11th October 1943 - 2nd November 1943) he heard from a police-officer that one of the BISDOM brothers there had been seriously ill-treated by the police official (incorrectly referred to in the declaration as "Kempei-officer) SUGIBAYASHI and the interpreter BAKRI when undergoing an interrogation, and had died the same night;

CONSIDERING that Johannes Marinus HANSEN in his undated written statements (products L I, L II and L III, red) declared on oath that from 15th June to 15th July 1943 he was detained in the police barracks at Emmahaven;

that during the time of this detention the Japanese police-official ("TOKOKA official") SUGIBAYASHI and the Indonesian interpreter SJAFEI came practically every day to the arrested persons' quarter to interrogate prisoners;

that he, witness HANSEN, often heard the shrieks and groans of prisoners who were ill-treated during these interrogations;

that he was a witness of the ill-treatment of his brother Leonard HANSEN by SUGIBAYASHI who beat his brother with a stick;

that his -

that his brother later told him, witness, that by means of ju-do holds he was several times flung to the ground by this Japanese who was wearing a sports costume;

that various other prisoners, namely de SITTER, van HEERDT, the brothers IN 't VELD, LIJFMAN, MARGES, KAISER, KAUTS and several Ambonesian and Menadonesian detainees were ill-treated by SUGIBAYASHI and SJAFEI;

that witness HANSEN too, stated that BISDOM was seriously ill-treated by SUGIBAYASHI and died as a result of this ill-treatment;
that he, witness, saw BISDOM lying in his cell, on 13th July 1943, in a very bad physical condition as a result of the ill-treatment, and that on 15th July he saw a coffin being carried out of the cell where BISDOM had been;
that he heard from a police-constable that BISDOM had died that morning;

that Johannes Marinus HANSEN, in his statement of 24th February 1943 (product L IV, red), further declared on oath that about August 1943 he and his brother Alfons Alfred were ill-treated in the "Maria Vereeniging"building (PADANG) by the TOKOKA-official SUGIBAYASHI and a Japanese soldier, when they were beaten and forced to kneel with a stick placed in the hollow behind the knees, on the ends of which stick Japanese soldiers stood, this causing injury to their legs;
that according to the statement made out on oath of office (product L V, red) this witness at a confrontation on 13th September 1946 with the accused stated that he thought he recognised the accused as the person named SUGIBAYASHI appearing in his written declaration but could not say it for certain because the person he was confronted with had a beard;

CONSIDERING that Mrs.Anna SAPOULETEJ during her hearing, not on oath, by the magistrate at Fort de Kock, Dr.F.W.T.HUNGER, according to the statement made out on oath of office and dated 18th October 1945 (product K,red) declared that after her arrest by the Japanese police in July 1943 she was beaten and kicked in the DJATI police barracks at PADANG by a Japanese called SUGIBAYASHI and threatened that she would be beheaded;

CONSIDERING that in his written statement on oath dated 10th January 1946 (product M, red) Pieter George Walraven MARGES declared that in June 1943 his father was arrested near PADANG PANDJANG by the Japanese police and taken from there to PADANG;
that he heard later that his father was beaten at PADANG by the interpreter SJAFEI and BAKRI, and again ill-treated later at Emmahaven;
that a Japanese called SUGIBAYASHI was named to him as being among those who ill-treated his, witness', father;

CONSIDERING that in his written statement on oath dated 5th July 1946 (product N,red) Josef KRIJGSMAN declared that in June 1943 he was interrogated in the police barracks at Emmahaven by the head of the Political Intelligence service called SUGIBAYASHI, helped by the Minangkabau interpreter SJAFEI, during which interrogation he was thrown against a wall and on to the ground by the said Japanese and beaten with a stick;
that this witness has given a description of what the Japanese official looked like, which description agrees exactly with that of accused;

CONSIDERING that Henri Theodor van HEERDT, according to the copies of his statement dated 1st January 1946 appearing among the documents(products Q I and Q II, red), declared on oath that about July 1943 he was ill-treated by the Japanese TOKOKA official SUGIBAYASHI in the police barracks at Emmahaven, being thrown to the ground by the latter by means of jiu-jitsu holds, beaten with a bamboo rod, and twice hung up by a rope round his feet to a pulley in the roof and beaten till he, witness, lost consciousness;
that SUGIBAYASHI tried to pull out his teeth with pincers, four teeth being broken off through this;
that he, witness, during a later interrogation by SUGIBAYASHI was hung up on a rope by his hands which had been tied behind his back;
that he was present when sub-Lieutenant Pieter MARGES was ill-treated by SUGIBAYASHI and other Japanese, bamboo splinters being stuck under MARGES' nails, and was present at the ill-treatment of an Ambonesian woman, two of whose nails were pulled out with pincers;

two of whose nails were pulled out with pincers;
that he was present when Samuel Dietrich Wilhelm WIJCKERHELD BISDOM, an acquaintance of his, was ill-treated by some Japanese among whom was SUGIBAYASHI, this prisoner being beaten with sticks and an iron rod till he lost consciousness;
that this witness also gave a detailed description of the Japanese mentioned which agreed with the appearance of the accused;

CONSIDERING that Heinrich Maurice VÖLKO, according to the copy of a statement on oath dated 6th January 1946 (product R,red), has declared that on 15th June 1943 he was arrested by the head ("Chief") of the TOKOKA at PADANG, SUGIBAYASHI;
that in July of that year he was beaten by SUGIBAYASHI, using a bamboo cane and a leather strap, and was then compelled to remain face downward for a long time, his body stretched out and supported only by his hands and feet;
that later at Emmahaven he was again ill-treated by SUGIBAYASHI and other officials among whom was the interpreter SJAFEI;

CONSIDERING that Alvera Wahda NEDERLOF, according to the written statement dated 1st January 1946 (product V,red), declared on oath that at PADANG in September 1943 she was insulted and ill-treated by a Japanese officer called SUGIBAYASHI,(referred to by witness as commandant of the interment camp) and by BAKRI, when SUGIBAYASHI beat her with a leather strap, and with his sword drawn threatened to behead her, which evidence is in the main confirmed by the declaration of Mrs.Augusta Wilhelmina Marie van BEMMEL-JANSSEN (according to her statement on oath dated 8th March 1946 product V, red) that she knows from hearsay that the internee NEDERLOF was ill-treated by Japanese, among others by a certain SOEKABIACHI:

CONSIDERING that Emile SPIERLET in the written statement dated 7th January 1946,(product C,blue) declared on oath that after his arrest on 23rd January 1943 he was beaten with a stick during an interrogation in the Djati prison at PADANG by, among others, the Japanese SUGIBAYASHI;

CONSIDERING that LIE TJOEN HOCK, according to his written statement dated 9th May 1946, (product D I, blue), declared on oath that in August 1944 he was several times ill-treated in the police station in the Djatilaan, PADANG, by the accused, BAKRI and SJAFEI, by whom he was beaten with a bit of wood and other objects, was kicked, and was thrown to the ground by the accused with jiu-jitsu holds and burnt with lighted cigarettes; this witness having at his confrontation with the accused on 11th October 1946, according to the statement of this, made out on oath of office (product D II, blue), recognised the latter with certainty as being the author of these ill-treatments;

CONSIDERING that LIE SOEN WAN, according to his written statement dated 22nd January 1946 (product E I, blue), declared on oath that at the end of July 1944 he was several times interrogated in the Djati police station at PADANG by a certain KUBIYASHI and the interpreter BAKRI, during which interrogations he was beaten with a ruler and sticks, was kicked by BAKRI and burnt with a lighted cigarette;
that the Japanese mentioned by witness is obviously the accused as the latter has admitted having interrogated the witness about that time in the Djati police-station about his views;

CONSIDERING that the accused has declared, both during the preliminary investigation and also at the sitting, that these depositions are not true and are untrustworthy and, particularly as regards that of YO HOCK SENG, are fabrications based on pure imagination("fanciful fairytales");
that,however, the accused has failed to make an acceptable statement as to why he has been incriminated by witness;
that at one time he has declared that a witness has made a lying statement in order to ward off from himself the suspicion of having collaborated

with the Japanese-

with the Japanese during the occupation, then again has put forward the plea of mistaken identity, and in some cases has limited himself to the remark that a witness will have made a false statement out of hatred of the Japanese in general;

that during his examination in court the accused has stated that he understands very well that he will be sentenced on the grounds of the incriminating statements made by the witness;

CONSIDERING that an indication of the accused's guilt can be obtained from the fact that during their interrogations all the witnesses gave the name of the accused, or one similar to it, as being that of the author of the ill-treatments carried out;

that it can be remarked here that no importance need be attached to the fact that in some of the statements the accused's name had been spelt slightly different, or that he has been mentioned as the commandant of an internment camp or an official of the KEMPEITAI, as the Court knows that such misunderstandings frequently arose among interned Europeans who often did not know the names and official functions of Japanese officials accurately;

that accused has stated that possibly a mistake of identity has been made and he has been confused with the TOKOKA official, Sergeant-major HOMMA, but this appears unacceptable as the latter's name has not been mentioned by any witness and his photograph(product E, red) which is present among the documents of the case, bears no likeness to the accused;

that furthermore, several of the witnesses at later confrontations recognised the accused as the person in question mentioned in their statements;

that the accused ascribes the fact of the witnesses mentioning his name each time, to the circumstance that he was known to those Indo-Europeans at PADANG who were not interned, as these latter knew him personally in connection with an investigation undertaken by him in his capacity as a police official with regard to the registration of these persons,but this circumstance cannot explain the fact that accused was incriminated by these witnesses;

CONSIDERING with regard to the evidence of YO HOCK SENG, whose name has been mentioned several times, that his statement concerning the ill-treatment of the chief engineer of the OMBILIN coal-mine, LANZING, has been confirmed by the statements of H.M.le ROUX and A.SCHEFFER;

that another statement as to the reliability of this witness is given in the letter dated 17th June 1946 (product G XIV, red) from K.H.BALLENDUX, a Netherlands East Indies civil servant;

that the Court-martial has considered having the said civil servant heard further on oath, but this seems to be unnecessary because, as the prosecutor has correctly advanced in his demand, it does not seem reasonable to suppose that he would then make a statement which would differ from the letter in question, and by having him questioned further an undesirable delay would arise in finishing the case;

CONSIDERING that the accused has further advanced in his defence that as a result of illness he was not in a condition to have committed the crimes with which he is charged and which demand great physical effort, by this apparently referring to throwing prisoners to the ground by means of jiu-jitsu holds and such-like cases;

that the witness SATO ZENZAKU, summoned to appear at the request of the defending counsel, has stated that he knows that in the beginning of 1943 the accused suffered from malaria and for some time afterwards looked ill;

that the acts charged took place some considerable time later and the Court from its own observation during the trial has seen that the accused is powerfully built so that this statement of his appears incredible, taking also into consideration in this connection the statements of several witnesses heard in the preliminary investigation to the effect that the accused several times applied this method of ill-treatment to prisoners, and accused's own statement that when being trained as a police officer in Japan he received instruction in the so-called "ju-do"(Japanese wrestling);

 CONSIDERING that the-

CONSIDERING that the Court-martial therefore rejects as inadmissible that which the accused has here put forward in his defence;

CONSIDERING now with regard to the written documents, insofar as these were used as evidence and read out and shown to the accused in a Japanese translation at the sitting, that among them are copies of statements and written declarations, being unsigned carbon copies of the statements of interrogations conducted by the English Field Security Service officers, the originals of which are obviously in the possession of the said officials of the Intelligence Service and have not been produced at the sitting of the Court;

CONSIDERING that as there can be no doubt as to the authenticity of these documents the Court recognises them and the declarations contained therein as legal evidence and therefore grants them full force as such, seeing that it can be accepted that the special circumstances in which the acts were committed and proof would have to be produced form an obstacle to the further production of evidence, with the result that should further evidence have to be produced the completion of the trial would be inadmissibly delayed;

CONSIDERING that those crimes laid to the accused's charge which have been declared proved were committed in time of war, and the acts committed were contrary to the laws and customs of war and the principles of international law, as these have been laid down with regard to prisoners in the Convention concerning the laws and customs of landwarfare dated 18th October 1907 (Netherlands Statute Book 1910 No.73) which convention was, among others, ratified by the Government of the Japanese Empire, especially the provision in article 4 of the Rule of Landwarfare that prisoners of war must be treated humanly;

CONSIDERING on the grounds of the above-mentioned documents and the information produced by them, as also the accused's admission that at the time and place stated in the committal order he was working as an official of the Japanese General police and that he is a subject of the enemy power Japan, all this taken in connection with one another, that it has been legally proved and the Court-martial also convinced thereby, that the accused, together and acting in company with the Indonesians BAGI and SJAFEI, at SAWAH LOENTOH, PADANG and EMMAHAVEN, in the West Residency of Sumatra on dates which cannot be exactly determined but all between March 1943 and August 1944, in time of war, as a subject of the enemy power Japan and in his function as an official of the KEIMUBU or Japanese General police, committed war crimes by, contrary to the laws and customs of war, exercising a reign of terror over persons, men and women, arrested by the Japanese police, torturing a number of them and, furthermore, treating them badly during the time that they were detained, the accused and the said Indonesians having repeatedly and lengthily with the hand, the fist, a whip, a stick, a leather belt, a stick with an iron point and an iron rod hit arrestees until they bled and lost consciousness; kicked them with the shod foot; threatened to kill them; flung them to the ground with jiu-jitsu holds; hung them upside-down by the feet; hung them up by their arms which had previously been tied behind their back; stuck splinters under their nails; made them kneel with a stick stuck through the hollow thus caused behind their knees and then exerted pressure on the projecting ends of the said stick; pulled out their nails with pincers; made them lie face to the ground for a long time with the body stretched out and supported only by their hands and feet; poured large quantities of water into their body and then exerted great pressure on their abdomen so that the water was pressed out of their body again; burnt them with lighted cigarettes; dragged them along by a rope round their neck; which systematic terrorism, bad treatment and torture caused the death of one arrestee and very severe bodily and mental suffering to many others;

CONSIDERING that-

CONSIDERING that during the investigation at the trial that with which the accused has been further or otherwise charged has not been legally proved except insofar as has been accepted above as proved;

CONSIDERING that it has been stated ~~that~~ by several witnesses that a great number of the persons ill-treated died later, but that - let alone that such was not known to the witnesses from their own knowledge and, further, that nothing is known in law of the death of these persons- it has not been established that the death of these prisoners was caused by the behaviour of the accused and his satellites and the ill-treatments received;

CONSIDERING that only in the case of the ill-treatment of the prisoner WIJCKERHELD BISDOM at Emmahaven has it appeared that the death of the prisoner was the direct result of the ill-treatment received during his interrogation at the police-barracks in the latter place, in which ill-treatment the accused took an actual part;

CONSIDERING that in the committal order the accused is charged with a so-called indirect authorship, whether alternative or not, by which he is said to have caused the Indonesian officials BAKRI and SJAFEI, subordinated to him, to commit the war crimes in question;

CONSIDERING with regard to this that at the sitting the accused denied that these persons were officially subordinated to him, buth that it is generally known that during the time of the Japanese occupation of Netherlands East Indies territory several lower ranking Indonesian officials did not dare ~~to~~ resist the orders of Japanese officials even when not directly subordinated to the latter, and even when these orders were given by officials who were not competent to do so;

that article 51 of the Penal Code has been declared non-applicable to the trial of war crimes seeing that, in general, according to Netherlands East Indies law an order to commit a crime cannot be considered an authorised order or considered by subordinates as an order given by the competent authority;

that only in the case when the subordinate can make a reasonable appeal to duress as laid down in article 48 of the said Code can the subordinate escape prosecution (see explanation re the legislation drafted with regard to war crimes given in supplement No.15031, page 46 and following);

that from the depositions of persons heard in the preliminary investigation it has appeared that the said Indonesian officials took an active share, more or less of their own free will, in the ill-treatments committed by them in company with the accused and it has not been made acceptable that they were forced to commit these punishable acts by duress so that they cannot appeal to this as a grounds for being excluded from punishment;

that the condition upon which an indirect author can be made liable to punishment is, that the person who has committed the punishable act, carried out through the collaboration of both, cannot be made responsible by penal law and so cannot be prosecuted as the author of that crime;

that nothing has appeared to show that accused was guilty of having caused the above-mentioned persons, subordinated to him, to commit the crimes mentioned in the committal order and so he must be acquitted of this part of the charge;

CONSIDERING that the punishable acts committed by the accused, insofar as these have been declared proved against him, constitute the elements of the crimes to be qualified further on, provided for and made punishable by article 4 of the War Crimes Penal Law Decree, Statute Book 1946 No.45;

that in the opinion of the Court the crime of systematic terrorism has been proved, indeed the multiple ill-treatments of prisoners and internees were committed in accordance with a system put into practice by the Japanese police officials so as to intimidate these persons and carry on a reign of terror among the population, submissive and so facilitate the Japanese war operations;

that accused made himself guilty of the war crimes mentioned in the

Definition of War-

F the object being to render the said population

Definition of War Crimes Decree, Statute Book 1946 No.44, article 1, numbers 2, 4 and 35, and committed each of these crimes several times, but with respect to the crime of systematic terrorism it can be accepted that the acts were committed in the execution of one and the same criminal decision, therefore forming a continuous action;

CONSIDERING that nothing having come to light about circumstances which would exclude his liability to punishment, the accused should be sentenced to punishment;

CONSIDERING with regard to the punishment to be awarded:
that the acts which have been fully proved are of a very serious nature, the severest penalties being provided for same in the aforesaid legislation;
that during the investigation in court it has appeared that the accused was guilty of the most repulsive ill-treatments and tortures of a great number of defenceless internees and prisoners and carried out a systematic reign of terror among these people, very many of whom fell a victim in consequence;
that the prisoners, most of whom were completely innocent of the accusations of sabotage and espionage brought against them, were treated in an inhuman way with the sole object in many cases of forcing them to a confession so that they might be sentenced to severe punishments;
that, further, it became known after the Japanese capitulation that several of these innocent people thus sentenced died as a result of the hardships suffered by them in imprisonment;
that the Court-martial has sought in vain for extenuating circumstances which could be taken into account in the accused's favour;
that in particular nothing has appeared to show that accused acted on superior orders, nor has he appealed to such;
that the Court knows that a certain amount of freedom was allowed to the officers of the notorious KEMPEITAI(special military police) organisation with regard to the application of the methods used to obtain a confession from accused persons;
that it has appeared from several depositions that accused and his stellites exerted themselves to the utmost in order to make unbearable the sufferings of prisoners subjected to the ill-treatments and tortures so as to break their moral and physical resistance, and even enjoyed the sight of their unfortunate victims' suffering;
that the accused, did not refrain from threatening and ill-treating women internees and young persons on the slightest pretext or on no pretext at all, and many of the internees in camps suffered mental torture through the danger to which they were exposed by the treatment of persons such as the accused;

CONSIDERING that the crimes of which the accused is declared guilty can in the opinion of the Court-martial only be punished by death and on these grounds the Penal Code at its severest should be applied to the accused, wherefore he must be sentenced to the penalty announced in the dictum of this sentence;

CONSIDERING that as there are grounds for fearing that the accused will try to escape in order to avoid undergoing his punishment the order that he be kept under arrest must be maintained;

In view, in addition to the provisions quoted above, of art.1 of the War Crimes Penal Law Decree, arts. 53, 73,74,75,89 and 109 of the War Crimes Legal Procedure Decree, Statute Book 1946 No.74, and arts. 64 and 65 of the Penal Code, as also part 20 of the Rules for Criminal Procedure;

A D M I N I S T E R I N G T H E L A W:

declares the accused mentioned above:

SUGIBAYASHI, Takeo ,

guilty of the war crimes:

I. "Systematic -

I. "Systematic terrorism", committed twice but in one continuous action,
II. "torture of civilians", committed several times,
III. "bad treatment of prisoners", committed several times:

Sentences him on that account to the DEATH penalty;

Acquits him on the remaining counts;

Orders that the accused be kept under arrest.

Sentence passed on 16th October 1947 by:

Major Dr. W. P. Thomas — President
Capt. Dr. A. C. van Hengel, Capt. H. J. C. van Wijk — Members

in the presence of
2nd Lieut. Dr. F. Hoogstrate — Secretary

all being members of the Infantry Reserve of the K.N.I.L.,

and summed up and decreed the same day.

Noted by me,
The Secretary,
s/F. Hoogstrate.

The President,
s/W. P. Thomas.

The Members,
s/A. C. van Hengel
H. J. C. van Wijk.

Fiat of execution.

Fiat of execution granted this day, 27th October 1947, by me, Dr. J. Gerritsen, head of the Temporary Administration at MEDAN.

The Commanding Officer,
s/J. Gerritsen.

The above sentence pronounced in public at the sitting of the Temporary Court-martial at MEDAN on 27th October 1947, by the President in the presence of the members and secretary, all the above forming the Court which passed sentence, and in the presence of the substitute prosecutor Dr. P. ROZENDAL, of the accused and of the latter's counsel.

The Secretary,
s/F. Hoogstrate.

The President,
s/W. P. Thomas.

Having heard the accused, who was assisted in his defence by Dr. J.H. RIPPERS, advocate 's-GRAVENHAGE (The Hague);

Considering that the accused is summoned to stand his trial on the charge:
that he in 1944 in the Netherlands, at anyrate in Europe, when the Netherlands were at war with Germany, in the state or public service of or for the enemy as "Bevolmachtigter der Reichstelle fuer Hochfrequenzforschung" (authorised agent of the State Department for High Frequency Research) in or of the "Reichsforschungsrat"(State Research Council), was guilty, violating the laws or customs of war, of intentionally inciting to, furthering and cooperating in, at anyrate as the superior intentionally allowing the plundering of property belonging to PHILIPS INDUSTRIES Ltd. in EINDHOVEN, this not being justified by military necessity, which property, namely materials and apparatus belonging to the aforesaid PHILIPS INDUSTRIES Ltd. and amounting to a total value of f 11363,50 at anyrate to some amount, namely and particularly by way of example, drilling machines, turning lathes, one or more oscillographs, one or more oscillators, a short-wave transmitter, a precision wave measurer, divers bulbs, divers valves, one or more crystal detectors, and a stock of gold to the value of f. 400.-, was stolen and carried away on the part of the Germans under the aforesaid circumstances by one or more Germans who were under the accused and acted by his orders;

Considering that the primary charge brought against the accused is one of intentionally inciting to, furthering and co-operating in the plundering further specified in the citation;

Considering that it has not been further specified in the citation in what actual way the inciting to, furthering and co-operating in the plundering took place and therefore as far as the primary charge is concerned the condition called for as laid down in article 277 of the Penal Code on pain of the citation being otherwise dablaral null and void is not fulfilled, namely that the citation must contain a description of the act charged, and the words used in the indictment to indicate this, namely inciting to, furthering and co-operating in", have in fact only a qualitative significance;

-Considering-

NETH. 14.

IN THE NAME OF THE QUEEN!

The Special Court in 'S-HERTOGENBOSCH, Second Panel,

Administering the law in the case of the Chief Prosecutor of that Court against:

ANTONIUS ROBERT BRAU,
born 7th June 1904 in STUTTGART, living at GEWÜRZMÜHLSTRASSE 5, BERLIN, Zehlendorf,
in provisional custody in the HUIS VAN BEWARING (detention prison) 's-HERTOGENBOSCH;

In view of the citation served on the accused and containing a statement of the act with which he has been charged and the circumstances connected with it;

In view of the investigation at the sitting of 13th April 1943;

Having heard the demand of the Chief Prosecutor to the effect that the accused be sentenced to FOUR YEARS imprisonment with reduction of the time already spent in detention;

Considering that the writer of the citation obviously has the text of the last paragraph of article 6 of the Charter in mind when charging among other things "the furthering of and co-operating in";

Considering with regard to this that the applicability of the aforesaid paragraph has not been inserted in the amendments brought in the Extraordinary Penal Law Decree by the Law of 10th July 1947, Stat.book H 253;

Considering that the citation is therefore null and void at least as the primary charge is concerned;

Considering with regard to the alternative charge that legal and convincing evidence has not been produced of this and accused must therefore be acquitted of the same;

Considering in particular that it has not been proved that as DR. DONNEVER's superior the accused did give the former orders - which then a fortiori implies that as the superior he intentionally allowed it - for the plundering specified in the citation;

Considering indeed that from the accused's statement it appears that he only gave orders to take/to Germany that apparatus from the PHILIPS' factories which was of importance and necessary for the Hochfrequenz-Forschung;

/off

Considering that not only according to the accused but also in the opinion of the expert witness Professor HOIST a considerable part of the apparatus and raw materials alluded to in the citation was or very shortly would have been of great importance for the German military operations, wherefore the taking away of the said articles must be considered as permissible in virtue of article 53 of the Rules of Land Warfare, even though perhaps in the present case there was no talk of a seizure in the purely formal sense such as that mentioned in the said article;

Considering that as far as the unlawful taking away of goods other than those dealt with above was concerned it has not been proved that the accused gave orders of any sort for this;

Administering the Law:

Declares the citation null and void as far as the primary charge brought against the accused is concerned:

Acquits the accused of that with which he has further been charged;

Orders his immediate release.

Judgment passed by:

DR. J.E.HOEFNAGEL	President
DR. J.H.JACOBS	Judge
J.A.G. WIJNANDS	Military Judge,

in the presence of:
DR M.J.M. WILLEMS, deputy clerk of the court, and pronounced at the public sitting of the aforesaid Court, 27th. April 1948.

Extract from the Special Court of Cassation's

JUDGMENT

in the Appeal of the Chief Prosecutor of the Special Court in 's-Hertogenbosch against the Acquittal by the latter Court of:

ABRAHAM ROBERT ESAU.

Introduction.

The Chief Prosecutor of the Special Court in 's-Hertogenbosch appealed on the following grounds:

1. violation or wrong application of art.261 in conjunction with art.349, Code of Penal Procedure, "as there can be no talk of declaring part of the writ to be null and void, the writ being a whole with no primary and alternative indictments."
   (N.B. In translation of original case against ESAU, page 1, last paragraph, please read " in article 261 of the Code of Penal Procedure ")
2. violation or wrong application of art.350 in conjunction with art.352, Code of Penal Procedure, the acquittal given being in essence a covert discharge from legal proceedings.
3. if the first ground should not lead to the judgment being quashed and the case sent back to the Special Court for retrial the second, if accepted by the Special Court of Cassation, could do so in spite of an acquittal having been given.

The Prosecutor continues:

" Indeed in my opinion both art.47 as well as art.53 of the Rules of Landwarfare are violated or wrongly applied for on the grounds of the established facts a punishable plundering can alone be inferred, not a permitted seizure.

The reasoning that the said apparatus were of great importance for warfare is extremely weak from the very fact of the statement, " very shortly ", and in my opinion it is not sufficient. A reasonable interpretation of art.53 of the Rules of Landwarfare brings a limitation of it in my opinion, that of, " immediate great importance for warfare ", in any case not an extension to an importance in the future such as now with the words " would be ". "

EXTRACT.

" Considering...that the disputed judgment for the rest is based on a particular view of the concept " plundering " appearing in the indictment, of which it is said at the same time that it took place with " a violation of the laws or customs of war";

that this concept in the indictment, taken in conjunction with the words following it, is obviously used in the same sense as in the clauses appearing below from art.6, under b, of the Charter of the London Agreement of 8 August 1945, promulgated by Royal Decree of 4 January 1946, Stat. Bk. No. G 5:

" War crimes: namely, violations of the laws or customs of war. Such violations shall include...plunder of public or private property,

wanton destruction of cities, towns or villages or devastation not justified by military necessity;"

Considering with respect to the interpretation of these provisions of the Agreement;

that it can already be deduced from the English text that the concluding words " not justified by military necessity " relate exclusively to the word " devastation " preceding them; that this latter concept is indeed so far colourless that it can comprise permissible as well as non-permissible destruction, and the concluding words are indispensable in order to distinguish the various forms of destruction considered as war crimes from those which are not forbidden in the rules of war;
that this is not the case however with the concepts in the text preceding it, " wanton " and " plunder";

that these two concepts though are in no way colourless but in themselves imply what is not permitted by the rules of war so that the concluding words, " not justified by military necessity", cannot relate to them;

that this same conclusion is imperative with relation to the French text of the said art.6, under b, (" le pillage des biens publics ou privés, la destruction sans motifs des villes et des villages ou la dévastation que ne justifient pas les exigences militaires "), in which the purely grammatically possible relationship of the concluding words, " que ne justifient pas les exigences militaires ", to the preceding words " pillage " and " destruction " also, is nevertheless on logical grounds unacceptable;

that any doubt which may possibly remain is excluded by the Russian text in which the word " razorjenije " (destruction) is not only separated by a semi-colon from the preceding parts but is, furthermore, followed by " njeoprawdannoje " (not justified) which as a singular form of declension can also grammatically only apply to the " destruction " immediately preceding it;

that therefore for the plundering charged to be punishable as a war crime it did not have to be determined and proved that it was not justified by military necessity;

that therefore the Special Court should alone have examined whether the stealing and taking away of goods as charged against the defendant falls under the concept " plunder of private property " in the sense of art.6, letter b, of the aforesaid Charter;

that it does not - as the Special Court thinks - stand in the way of that qualification that the goods stolen and taken away - as the Special Court in fact establishes - were of the greatest importance for the enemy's warfare;

that indeed this one quality of the goods in question did not justify their being taken away unless at the same time they fall under one of the categories of articles which the occupant in virtue of par.2 of art.53 of the Rules of Landwarfare can, by way of exception, seize from private individuals;

that as far as this Court can conclude from the disputed judgment the goods taken away did not belong to one of those categories, neither did they to the general group called " munitions de guerre " appearing at the end of the enumeration;

that indeed neither the text nor the history of art.53, par. 2, gives ground for the proposition that the concept " munitions de guerre " should be extended far beyond its normal bounds to materials and apparatus such as drilling-machines, turning-lathes, bulbs (lamps), valves and gold and even to other objects which - however important they may be for the technical scientific investigator - certainly do not stand in such close connection with

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warfare that they must be considered as being among the limitative articles enumerated in art.53, par.2, and thus to be excepted from the inviolability of private property in a war on land;

that a decision in a similar sense has been made in the judgments of the French and American courts at respectively Rastadt on 30 June 1948 against Hermann Röchling and others, and at Nuremberg on 31 July 1948 against Krupp von Bohlen and Halbach and others;

Considering that from all this it follows that as far as this part of the alternative charge is concerned the Special Court has acquitted the defendant of an act other than that with which he has been charged;

that consequently the given acquittal is to this extent not an acquittal in the meaning of art.430 of the Code of Penal Procedure, so that the appellant's appeal is admissible;

Considering now with regard to the second and third grounds of appeal directed against this part of the disputed judgment and ex officio:

that from what has been weighed about this above it appears that on this point the Special Court did not go into a consideration of the foundations of the alternative charge and decide thereover, the result of this in accordance with arts.350, 358 and 359, Code of Penal Procedure, being nullity;

Rejects the appeal in so far as it is directed against the declaring null and void that part of the writ which contains the primary charge;

Declares the appellant's appeal to be non-admissible in so far as it is directed against the acquittal of the defendant of that part of the alternative charge referred to above and which was discussed in the first place;

Quashes the disputed judgment in so much as the decision on the remaining part of the alternative charge is concerned;

Administering the law pursuant to art.106 of the Judicial Organisation Law;

Remits the case to the Special Court in 's-Gravenhage in order that it may be retried on the existing writ and disposed of, due attention being paid to the unconditional acquittal given.

Judgment passed by:
Prof. Dr. Verzijl — Vice-President
Dr. Veegens)
Dr. Scholten) — Judges
Dr. Mouton)
Col. Dr. Tollenaar — Military Judge
in the presence of:
Dr. Hoorweg — Deputy Clerk of the Court
and pronounced at the public sitting on 21 February 1949.

sgd. J.H.W. Verzijl, D.J. Veegens, Scholten, Mouton, Tollenaar, A.F. Hoorweg.

N.B. Code of Penal Procedure, art.430:
" No appeal in cassation shall be allowed against the acquittal of an accused.
This provision does not apply to the petition of appeal in the interest of the law."